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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of Sections 3(n) and 332) GN Docket No. 93-252
of the Communications Act)
)
Regulatory Treatment of Mobile Services)
)

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COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

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I. INTRODUCTION

Pursuant to Rule 1.415 of the Rules of the Federal Communications Commission ("Commission"), Nextel Communications, Inc. ("Nextel") hereby files these Comments on the Commission's Third Further Notice of Proposed Rule Making ("Notice") in the above-referenced proceeding.^{1/}

In the Notice, the Commission proposes to broaden the application of the Commercial Mobile Radio Services ("CMRS") spectrum cap to include Private Mobile Radio Services ("PMRS") spectrum and to apply the cap immediately to all CMRS and PMRS licensees, without regard to the three-year grandfather period Congress provided reclassified mobile services in the Omnibus Budget Reconciliation Act of 1993 ("Budget Act").^{2/} While Nextel does not oppose the Commission's spectrum cap proposal, Nextel is taking this opportunity to express its concerns about the

^{1/} Third Notice Of Proposed Rule Making, GN Docket No. 93-252, FCC 95-156 (May 5, 1995).

^{2/} Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, §6002(b)(2)(B), 107 Stat. 312, 392 (1993).

Commission's continued application of new rules, regulations, obligations and duties on reclassified CMRS providers, without the Congressionally-mandated elimination of the disparities in the licensing and operation of reclassified services.^{3/}

II. BACKGROUND

Nextel's Specialized Mobile Radio ("SMR") and wide-area SMR services were among the private mobile radio services reclassified as CMRS after enactment of the Budget Act. When Congress created this new CMRS category, however, Congress recognized that a transition period would be necessary for providers, such as Nextel, which were being reclassified from private carrier to common carrier regulation. To ensure that this three-year time period would be of benefit to those parties making the transition, Congress also provided that, within one year of enactment, the Commission must adopt new rules and regulations for CMRS providers that would eliminate the existing regulatory disparities among CMRS carriers. Parity in licensing, operational and technical rules, Congress stated, would be necessary to ensure that similarly situated providers would be regulated in a similar manner.

In the nearly two years since the passage of the Budget Act, however, the Commission has failed to adequately fulfill this Congressional mandate. In contrast to eliminating regulatory disparities between existing CMRS and reclassified CMRS, the Commission has widened the disparities by easing the regulations imposed upon existing common carriers, by proposing new obligations

^{3/} See Budget Act, Section 6002 (d) (3) (b).

for all CMRS licensees, and at the same time, failing to eliminate the licensing disparities which continue to unnecessarily burden reclassified providers. The Commission's intentions herein to immediately impose the CMRS spectrum cap on all reclassified providers is just one more attempt to impose premature obligations on reclassified CMRS providers without first eliminating the regulatory disparities they continue to bear vis-vis-vis CMRS competitors.

III. DISCUSSION

THE COMMISSION SHOULD ELIMINATE THE CONTINUED REGULATORY DISPARITIES AMONG CMRS PROVIDERS BEFORE IMPOSING ADDITIONAL BURDENS ON RECLASSIFIED PROVIDERS.

In the 18 months that have passed since the Commission reclassified interconnected SMR, wide-area SMR, and other private mobile radio services as CMRS,^{4/} the Commission has issued numerous rule makings and orders which have changed the regulations applicable to reclassified providers, but which have not eliminated the disparities between reclassified providers and their CMRS competitors. Under existing Commission rules, for example, wide-area SMR systems are still licensed on a site-by-site basis while cellular systems are licensed on a geographic area basis. This disparity means that a wide-area SMR licensee has to file for hundreds of licenses for a single system while a cellular operator needs only one license for a single system. Cellular and personal communications services ("PCS") are licensed on contiguous blocks

^{4/} See Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1411 (1994) at paras. 90-91.

of spectrum (up to 30 MHz) for providing their wide-area services. Wide-area SMRs continue to operate on non-contiguous spectrum which is shared with other licensees on a co-channel non-interference basis.

Rather than eliminating these and other disparities during the time period after the Budget Act's adoption, the Commission has:

- (1) rewritten Part 22 of its Rules to ease the regulation of cellular providers;5/
- (2) started the auctioning of PCS licenses;6/
- (3) allowed cellular providers into the SMR dispatch market;7/
- (4) allowed wireline companies to enter into the SMR marketplace;8/
- (5) initiated rule makings to increase the burdens imposed upon reclassified providers -- equal access obligations,9/ and resale obligations;10/

5/ Report and Order, CC Docket No. 92-115, 9 FCC Rcd 6513 (1994).

6/ See, e.g., News Release "FCC Grants Ten Regional Narrowband PCS Licenses," released January 23, 1995; News Release of March 13, 1995 announcing the conclusion of the Commission's first broadband PCS licenses.

7/ Report and Order, GN Docket No. 94-90, released March 7, 1995.

8/ *Id.*

9/ Notice of Proposed Rule Making, CC Docket No. 94-54, 9 FCC Rcd 5408 (1994).

10/ Second Notice of Proposed Rule Making, CC Docket No. 94-54, released April 20, 1995.

- (6) reduced the permitted deconstruction time-period for SMRs from 12 months to three months;11/
- (7) granted a four-month construction extension to thousands of SMR licensees who claimed to have been defrauded by "licensing mills,"(after having tolled the construction deadline for more than a year);12/
- (8) frozen the licensing of the 280 SMR channels for nearly a year;13/
- (9) failed to process the SMR licensing freeze waiver applications as provided for in the Third Report and Order;14/ and
- (10) retained numerous unnecessary and antiquated obligations on wide-area SMRs, e.g., station-by-station licensing, station-by-station fee payments, the inability to move or

11/ Second Report and Order and Second Further Notice of Proposed Rule Making, PR Docket No. 89-553, FCC 95-159, released April 17, 1995.

12/ Memorandum Opinion and Order, FCC 95-211, released May 24, 1995.

13/ See Third Report and Order, GN Docket No. 93-252, 9 FCC Rcd 7988 (1994) at para. 108.

14/ See *Id.*, wherein the Commission stated that it would "consider requests for wavier of the application freeze for new station licenses for permanent facilities, provided that operation of such proposed stations affect coverage solely within a geographic area and on a frequency channel that already is licensed permanently to the applicant(s). . . ." Pursuant to this waiver allowance, Nextel and others have spent hundreds and thousands of dollars in engineering and filing fees to file the requisite applications. Many of these applications are for stations essential to expeditious build-out of wide-area SMR systems. However, almost a year has passed without any Commission consideration.

modify a station without prior Commission approval, the continued operation on non-contiguous spectrum, and the continued need and requirement to provide co-channel interference protection to adjacent licensees.

Rather than eliminating the licensing disparities among CMRS providers, the Commission's proposal to apply the spectrum cap to reclassified providers only exaggerates these disparities. As currently written, the CMRS spectrum cap rules limit SMR spectrum to no more than 10 MHz for spectrum cap purposes in recognition that SMR spectrum is not equivalent to other CMRS spectrum due to licensing and access disparities. Rather than extending the spectrum cap to private mobile radio services and applying it immediately to reclassified providers, the Commission should have eliminated these licensing disparities. Once the disparities are eliminated, the spectrum cap could be applied in an equivalent manner to all CMRS providers.^{15/} While Nextel does not oppose the application of a spectrum cap, Nextel stresses that the Commission has yet to fulfill its Congressional mandate to establish a level regulatory playing field for all CMRS providers.

IV. CONCLUSION

In the Budget Act, Congress established a new regulatory classification for mobile services. In creating this new classification, Congress recognized that many providers would be

^{15/} PMRS spectrum may continue to require a limitation on the attributable spectrum since PMRS providers will continue to operate on non-equivalent, non-contiguous spectrum. To the extent that any CMRS provider is forced to continue operating on non-contiguous spectrum, it too should be entitled to such provisions.

reclassified from private carrier status to common carrier status. A transition period was therefore provided for these reclassified providers to adjust to their new regulatory classification. Congress also provided a one-year period during which the Commission was to establish a new CMRS framework to ensure all CMRS providers would be subject to similar rules and regulations. The Commission has not fulfilled its Congressional mandate to provide parity in the regulation of CMRS providers. Until that mandate is complete, the Commission should not continue to burden reclassified providers with new rules such as the spectrum cap proposed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

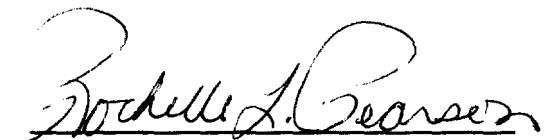
I, Rochelle L. Pearson, hereby certify that on this 5th day of June, 1995,
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